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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,461	07/31/2001	James K. Weixel	00-5017	3578

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EXAMINER

MCCLELLAN, JAMES S

ART UNIT PAPER NUMBER

3627

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/919,461

Applicant(s)

WEIXEL, JAMES K.

Examiner

James S McClellan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Amendment*

1. Applicant's submittal of an amendment was entered on July 21, 2004, wherein:
  - claims 1-5 and 7-32 are pending;
  - claim 6 has been canceled; and
  - claims 1 and 17 have been amended.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7-12 and 15-32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,991,749 (hereinafter "Morrill").

Regarding **claims 1-5, 7, and 8**, Morrill discloses a method and system configured to facilitate ordering of goods or services from a vendor by a customer, comprising: one or more base stations ("cell antenna", see column 2, lines 29-31) configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer (for example, see column 6, line 63 - column 7, line 26); and a processing center ("CPU", see column 2, lines 29-31) coupled between the one or more base stations and the vendor ("payee", see column 5, lines 51-60) and configured to receive the abbreviated dialing sequence, to transmit customer information (it is inherent that the vendor received customer identification information

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because the vendor is capable of directly billing the user, see column 7, lines 63-65) to the vendor relating to the order, and to bill a wireless account of the customer for a monetary amount of the order (see column 3, lines 20-35); customer preferences are stored in a database (see column 7, lines 43-46); posting abbreviated dialing sequence codes corresponding to the vendor on signs (see column 7, lines 14-16); the location of the mobile terminal is determined (see paragraph bridging columns 6-7, wherein the facility ID number is an indication of the user's location; see also column 4, line 34); and the vendor is a restaurant and the customer is a motorist (see column 3, lines 46-47).

Additional features disclosed by Morrill as required by claims 9-12 and 15-32, that were not addressed above include: billing a credit card or debit card of the customer for a monetary amount of the order (see column 4, lines 16-24); entering into an agreement with the vendor to provide the abbreviated dialing service to the vendor (see column 6, lines 47-62); collecting revenue from the vendor according to the agreement ("transaction fees", see column 6, lines 59-62); and acquiring a preferred manner of payment from the customer (see column 4, lines 17-38).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morrill in view of U.S. Patent No. 5,327,144 (hereinafter "Stilp").

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Morrill disclose all the claimed elements as set forth above, but fails to explicitly disclose calculating the location of the mobile terminal based on signal information received at one or more base stations using time delay information and global positioning system information.

Stilp teaches the use of calculating the location of the mobile terminal based on signal information received at one or more base stations using time delay information (see paragraph bridging columns 6-7) and global positioning system information.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Morrill with time delay cellular phone location determination taught by Stilp, because determining the location of a user will allow the user to enter fewer codes but will locate the proper vendor.

### ***Response to Arguments***

6. Applicant's arguments filed July 21, 2004 have been fully considered but they are not persuasive.

On page 13, first full paragraph, Applicant argues that Morrill fails to disclose a processing center that transmits customer information to the vendor relating to the order based on a location of the mobile terminal. The Examiner respectfully disagrees. As pointed out in the first office action on page 3, Morrill discloses the above cited limitations in the paragraph bridging columns 6-7, wherein the facility ID number is an indication of the user's location).

On page 14, third paragraph, Applicant argues that Morrill fails to disclose sending customer information to a vendor based on the location of the mobile terminal. Once again, the

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Examiner respectfully disagrees. Morrill discloses sending customer info to a vendor based on the location of the mobile terminal (see column 7, lines 5-6).

On page 15, second full paragraph, Applicant argues that Morrill fails to disclose identifying a vendor that is most convenient to the customer based on the determined location of the mobile terminal. The Examiner respectfully disagrees. It is inherent that the most convenient vendor is the vendor located closest to the mobile terminal. In example 2 of Morrill, the mobile terminal is already located next to the most convenient vendor (a pay parking lot).

On page 15, fourth full paragraph, Applicant argues that Morrill fails to disclose abbreviated dialing. The Examiner respectfully disagrees. Morrill discloses abbreviated dialing in the paragraph bridging columns 6-7 ("the unique transaction code has as few digits as possible"; "short-cut key sequence").

On page 16, first full paragraph (also page 17, second full paragraph), Applicant argues that Morrill fails to show the features of claim 19 (customer preferences include a default order). The Examiner respectfully disagrees. In column 7, lines 5-12, Morrill discloses a separate code for customers paying monthly rates, wherein the monthly parking rate is a "default order".

On page 16, third and fifth full paragraphs, Applicant argues that Morrill fails to disclose sending customer information to one or more locations of the vendor based on determined locations. Again, the Examiner respectfully disagrees (see Morrill, column 7, lines 5-6).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

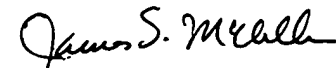
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or faxed to:

(703) 872/9306 (Official communications) or  
(703) 746-3516 (Informal/Draft communications).

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Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington, VA, 7<sup>th</sup> floor receptionist.

  
James S. McClellan  
Primary Examiner  
A.U. 3627

jsm  
November 14, 2004